

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address Lynda T. Bui - Bar No. 201002 Rika M. Kido - Bar No. 273780 SHULMAN BASTIAN FRIEDMAN & BUI LLP 100 Spectrum Center Drive, Suite 600 Irvine, California 92618 Telephone: (949) 340-3400 Facsimile: (949) 340-3000 Email: LBui@shulmanbastian.com RKido@shulmanbastian.com <input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Weneta M.A. Kosmala, Chapter 7 Trustee	FOR COURT USE ONLY
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION	
In re: PETER WOO SIK KIM and SHARON SOYUN KIM, Debtors.	CASE NO.: 8:19-bk-11414-ES CHAPTER: 7 NOTICE OF SALE OF ESTATE PROPERTY

Sale Date: 12/03/2020	Time: 10:30 am
Location: U.S. Bankruptcy Court, 411 W. Fourth Street, Ctrm. 5A, Santa Ana, CA 92701	

Type of Sale: ☒ Public ☐ Private **Last date to file objections:** 11/19/2020

Description of property to be sold: State Court Action and Bristol Express Interest as described in the attached Statement of Information and Settlement/Sale Motion

Terms and conditions of sale: See Attached Notice of Settlement/Sale Motion, Settlement/Sale Motion, Statement of Intention Subject to the Bidding Procedures set forth in the Settlement/Sale Motion, the State Court Action and the Bristol Express Interest will be sold to the Kang Trust for \$35,000.00, or an amount as increased by successful overbid, pursuant to the terms and conditions set forth in the Sale/Settlement Agreement.

Proposed sale price: \$35,000.00, subject to overbids

Overbid procedure (if any): Initial overbid amount of \$40,000.00, minimum bid increments thereafter shall be \$1,000.00

Overbids must be in writing and received by the Trustee and her counsel on or before 11/25/20 and accompanied by a deposit of at least \$5,000.00 in certified funds made payable to the Trustee. (See Bidding Procedure in Sale Motion)

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

Hearing Date/Time: 12/03/2020 at 10:30 a.m.

Location: U.S. Bankruptcy Court
411 W. Fourth Street, Ctrm. 5A
Santa Ana, CA 92701

Contact person for potential bidders (include name, address, telephone, fax and/or email address):

Rika M. Kido, Esq.
Shulman Bastian Friedman & Bui LLP
100 Spectrum Center Drive, Suite 100
Irvine, CA 92618
Telephone: (949) 340-3400
Email: RKido@shulmanbastian.com

Date: 11/10/2020

Statement of Information in Compliance with LBR 6004-1(c)(3)

<u>LBR 6004-1(c)(3) Requirement</u>	<u>Information</u>
<i>LBR 6004-1(c)(3)(A)</i> Date, Time, and Place of the hearing on the proposed sale:	Hearing Date and Time: December 3, 2020 at 10:30 a.m. Hearing Place: U.S. Bankruptcy Court 411 West Fourth Street, Courtroom 5A Santa Ana, CA 92701
<i>LBR 6004-1(c)(3)(B)</i> Name and address of the proposed buyer:	The Kang Family 2007 Revocable Trust ("Kang Trust") c/o E. Richard McGuire, Esq. Shamrock Legal, APC 2828 Cochran Street, Suite 350 Simi Valley, CA 93065
<i>LBR 6004-1(c)(3)(C)</i> Description of the property to be sold:	Estate's interest in State Court Action entitled <i>Peter Kim, et. al. v. The Kang Family 2007 Revocable Trust, et. al.</i> , Case No. 30-2018-01007154-CU-FR-CJC ("State Court Action") and the Estate's rights, if any, to Bristol Express Car Wash, LLC ("Bristol Express") by virtue of the Debtors being the sole members of Bristol Express and there may be remnant rights, if any, for prosecuting and defending actions by or against it in order to collect and discharge obligations in its winding down efforts conferred by Cal. Corp. Code § 17707.06 because Bristol Express has been dissolved with the California Secretary of State ("Bristol Express Interest").
<i>LBR 6004-1(c)(3)(D)</i> Terms and conditions of the proposed sale, including the price and all contingencies:	Subject to the Bidding Procedures set forth below, the State Court Action and Bristol Express Interest will be sold to the Kang Trust for \$35,000.00, or an amount as increased by successful overbid, pursuant to the terms and conditions set forth in the Settlement/Sale Agreement attached as Exhibit "2" to the Declaration of Weneta M.A. Kosmala annexed to the Settlement/Sale Motion.
<i>LBR 6004-1(c)(3)(E)</i> Whether the proposed sale is free and clear of liens, claims or interests, or subject to them, and a description of all such liens, claims or interests:	Not applicable.
<i>LBR 6004-1(c)(3)(F)</i> Whether the proposed sale is subject to higher and better bids:	Yes - See the Bidding Procedures set forth in the Settlement/Sale Motion.
<i>LBR 6004-1(c)(3)(G)</i> Consideration to be received by the Estate, including estimated commissions, fees and other costs of sale:	The Estate is expected to receive at least \$35,000.00 or an amount as increased by a successful overbid.
<i>LBR 6004-1(c)(3)(H)</i> If authorization is sought to pay commission, the identity of the auctioneer, broker, or sales agent and the amount or percentage of the proposed commission to be paid:	There is no broker that will be involved in the sale transaction, and no escrow company will be utilized. It is anticipated that there will be no costs associated with the sale other than regular administrative costs of the Debtors' Estate.
<i>LBR 6004-1(c)(3)(I)</i> A description of the estimated or possible tax consequences to the Estate, if known, and how any tax liability generated by the sale of the property will be paid:	Although it is anticipated there will not be any capital gains tax consequences, at this time, the Trustee does not know for certain what the capital gains taxes liability will be, if any, generated by the sale. In the event that there is any tax liability generated from the sale, it is a liability of the Estate.
<i>LBR 6004-1(c)(3)(J)</i> Date which objection must be filed and served:	Objections, if any, must be filed and served fourteen (14) days prior to the Hearing Date or November 19, 2020.

NOTICE AND MOTION

<p>Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address</p> <p>Lynda T. Bui - Bar No. 201002 Rika M. Kido - Bar No. 273780 SHULMAN BASTIAN FRIEDMAN & BUI LLP 100 Spectrum Center Drive, Suite 600 Irvine, California 92618 Telephone: (949) 340-3400 Facsimile: (949) 340-3000 Email: LBui@shulmanbastian.com RKido@shulmanbastian.com</p> <p><input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Weneta M.A. Kosmala, Chapter 7 Trustee</p>	<p>FOR COURT USE ONLY</p>
<p style="text-align: center;">UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION</p>	
<p>In re:</p> <p>PETER WOO SIK KIM and SHARON SOYUN KIM,</p> <p style="text-align: center;">Debtors.</p> <p style="text-align: right;">Debtor(s).</p>	<p>CASE NO.: 8:19-bk-11414-ES CHAPTER: 7</p> <p>NOTICE OF MOTION FOR:</p> <p>CHAPTER 7 TRUSTEE'S MOTION FOR ORDER: 1) APPROVING SETTLEMENT AND COMPROMISE OF DISPUTES UNDER FED. R. BANKR. P. 9019 BY AND BETWEEN CHAPTER 7 TRUSTEE AND THE KANG FAMILY 2007 REVOCABLE TRUST; 2) APPROVING THE SALE OF PROPERTY OF THE ESTATE PURSUANT TO 11 U.S.C. § 363(b)(1), SUBJECT TO OVERBIDS, COMBINED WITH NOTICE OF BIDDING PROCEDURES AND REQUEST FOR APPROVAL OF THE BIDDING PROCEDURES UTILIZED; AND 3) GRANTING RELATED RELIEF</p> <p>(Specify name of Motion)</p> <p>DATE: 12/03/2020 TIME: 10:30 am COURTROOM: 5A PLACE: United States Bankruptcy Court 411 W. Fourth Street Santa Ana, CA 92701</p>

1. TO (*specify name*): Honorable Erithe A. Smith, U.S. Bankruptcy Judge, the Office of the United States Trustee
and All Interested Parties
2. NOTICE IS HEREBY GIVEN that on the following date and time and in the indicated courtroom, Movant in the above-captioned matter will move this court for an Order granting the relief sought as set forth in the Motion and accompanying supporting documents served and filed herewith. Said Motion is based upon the grounds set forth in the attached Motion and accompanying documents.
3. **Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)

4. **Deadline for Opposition Papers:** This Motion is being heard on regular notice pursuant to LBR 9013-1. If you wish to oppose this Motion, you must file a written response with the court and serve a copy of it upon the Movant or Movant's attorney at the address set forth above no less than fourteen (14) days prior to the above hearing date. If you fail to file a written response to this Motion within such time period, the court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.
5. **Hearing Date Obtained Pursuant to Judge's Self-Calendaring Procedure:** The undersigned hereby verifies that the above hearing date and time were available for this type of Motion according to the judge's self-calendaring procedures.

Date: 11/10/2020

Shulman Bastian Friedman & Bui LLP
Printed name of law firm

/s/ Rika M. Kido
Signature

Rika M. Kido
Printed name of attorney

1 Lynda T. Bui - Bar No. 201002
Rika M. Kido - Bar No. 273780
2 **SHULMAN BASTIAN FRIEDMAN & BUI LLP**
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5 RKido@shulmanbastian.com

6 Attorneys for Weneta M.A. Kosmala,
Chapter 7 Trustee

7
8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

10 In re

11 **PETER WOO SIK KIM and SHARON**
12 **SOYUN KIM,**

13 Debtors.

Case No. 8:19-bk-11414-ES

Chapter 7

CHAPTER 7 TRUSTEE'S MOTION FOR ORDER:

(1) **APPROVING SETTLEMENT AND
COMPROMISE OF DISPUTES UNDER FED.
R. BANKR. P. 9019 BY AND BETWEEN
CHAPTER 7 TRUSTEE AND THE KANG
FAMILY 2007 REVOCABLE TRUST;**

(2) **APPROVING THE SALE OF PROPERTY OF
THE ESTATE PURSUANT TO 11 U.S.C. §
363(b)(1), SUBJECT TO OVERBIDS,
COMBINED WITH NOTICE OF BIDDING
PROCEDURES AND REQUEST FOR
APPROVAL OF THE BIDDING
PROCEDURES UTILIZED; AND**

(3) **GRANTING RELATED RELIEF;**

**MEMORANDUM OF POINTS AND
AUTHORITIES AND DECLARATION OF
WENETA M.A. KOSMALA IN SUPPORT
THEREOF**

[Request for Judicial Notice filed concurrently herewith]

Hearing Date

Date: December 3, 2020

Time: 10:30 a.m.

Ctrm: 5A

Place: United States Bankruptcy Court
Ronald Reagan Federal Building
411 W. Fourth Street
Santa Ana, CA 92701

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**TO THE HONORABLE ERITHE A. SMITH, UNITED STATES BANKRUPTCY
JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE AND ALL INTERESTED
PARTIES:**

Weneta M.A. Kosmala, the duly appointed, qualified and acting Chapter 7 trustee (“Trustee”) for the bankruptcy estate (“Estate”) of Peter Woo Sik Kim and Sharon Soyun Kim (“Debtors”) brings this Motion for Order: (1) Approving Settlement and Compromise of Disputes Under Fed. R. Bankr. P. 9019 By and Between Chapter 7 Trustee and The Kang Family 2007 Revocable Trust; (2) Approving the Sale of Property of the Estate Pursuant to 11 U.S.C. § 363(b)(1), Subject to Overbids, Combined with Notice of Bidding Procedures and Request for Approval of the Bidding Procedures Utilized; and (3) Granting Related Relief (“Settlement/Sale Motion”). In support thereof, the Trustee respectfully represents as follows:

I. SUMMARY OF ARGUMENT¹

Through this Settlement/Sale Motion, the Trustee requests approval of the Settlement and Sale Agreement (“Settlement/Sale Agreement”) entered into between the Trustee and The Kang Family 2007 Revocable Trust (“Kang Trust”), a true and correct copy of which is attached as **Exhibit “2”** to the Declaration of Weneta M.A. Kosmala (“Kosmala Decl.”) attached hereto. The Trustee has received an offer from the Kang Trust to purchase (i) the Estate’s interest in the State Court Action and (ii) the Estate’s rights, if any, to Bristol Express by virtue of the Debtors being the sole members of Bristol Express and there may be remnant rights, if any, for prosecuting and defending actions by or against it in order to collect and discharge obligations in its winding down efforts conferred by Cal. Corp. Code § 17707.06 because Bristol Express has been dissolved with the California Secretary of State, for the price of \$35,000.00, subject to overbids. These rights are being sold “as is, where is” with no representations whatsoever. Through the sale, the Trustee is expected to generate net proceeds of approximately \$35,000.00 for the benefit of the Estate and its creditors. In the event the Purchase Price is increased by a successful overbid, the estimated net proceeds will increase, providing an additional benefit to unsecured creditors.

¹ All capitalized terms are defined below.

1 The Settlement/Sale Agreement also resolves all disputes, claims, demands and causes of
2 action related to the Kang Claim and the Security Deposit. As set forth below, the Trustee believes
3 the interests of the creditors and the Estate are best served if this Court approves the proposed
4 Settlement/Sale Agreement under the four factors set forth by *A & C Properties*. The terms of the
5 settlement provide for the Kang Trust to have an allowed non-priority general unsecured claim
6 against the Estate in the reduced amount of \$125,771.17 and provides for an immediate and definite
7 benefit in the form of \$90,000.00. The settlement will save the Estate the time and expense litigating
8 both the Kang Claim and turnover of the Security Deposit, netting the same result as if the Estate
9 were to proceed with such litigation. The Trustee believes, based on her independent investigation
10 and her sound business judgment, that the settlement regarding the Kang Claim and Security Deposit
11 is in the best interest of the Estate. Therefore, based on *A & C Properties*, and on the Trustee's good
12 business judgment, the Trustee respectfully requests the Court approve the Settlement Motion.

13 **II. RELEVANT FACTS**

14 **A. Commencement of the Instant Bankruptcy Case**

15 On April 17, 2019, the Debtor filed a voluntary petition for relief under Chapter 7 of the
16 Bankruptcy Code, commencing Case No. 8:19-bk-11414-ES ("Petition Date"). (See Request for
17 Judicial Notice filed concurrently herewith ("RJN"), Exhibit ("Ex.") A)

18 Weneta M.A. Kosmala is the duly appointed, qualified and acting Chapter 7 Trustee for the
19 Debtor's Estate. *Id.*

20 **B. Lease of the Commercial Property, Security Deposit and State Court Action**

21 On December 6, 2017, the Debtors and Xena Ocean, Inc. (for which the Debtors are one
22 hundred percent (100%) interest holders) entered into a *Single Tenant Lease – NNN* with Young Ye
23 Kang, as Trustee of the Kang Trust ("Lease") for the commercial property located at 2750 Bristol
24 Street, Costa Mesa, CA ("Commercial Property"). (See RJN, Ex. C) Pursuant to the Lease, the
25 Debtors paid a security deposit in the total amount of Two Hundred Thousand Dollars (\$200,000.00)
26 to the Kang Trust ("Security Deposit"). The Trustee is informed and believes that Debtor Peter Kim
27 and W&N Hendon Revocable Trust each paid \$100,000.00 of the Security Deposit. (See Kosmala
28 Decl. ¶ 3)

1 Pursuant to the Assignment, Assumption and Landlord Consent dated December 7, 2017,
2 Xena Ocean, Inc. assigned its right, title and interest in, to and under the Lease to Bristol Express
3 Car Wash, LLC (“Bristol Express”). (See RJN, Ex. C)

4 On their Schedule A/B, the Debtors list their interest in Bristol Express. (See RJN, Ex. B)
5 The Trustee is informed and believes that the Debtors were the only members of Bristol Express.
6 (See Kosmala Decl. ¶ 4) Bristol Express was dissolved, its registration was cancelled, and its
7 powers, rights and privileges ceased in California as of May 20, 2019 as provided for in the LLC
8 Termination – Certificate of Cancellation filed with the California Secretary of State. (See Kosmala
9 Decl., Ex. 1) Pursuant to Cal. Corp. Code § 17707.06, Bristol Express “continues to exist for the
10 purpose of winding up its affairs, prosecuting and defending actions by or against it in order to
11 collect and discharge obligations, disposing of and conveying its property, and collecting and
12 dividing its assets.”

13 On their Schedule A/B, the Debtors list “Claim against Kang Family Trust” with an unknown
14 value. (See RJN, Ex. B)

15 On their Statement of Financial Affairs, Part 4, the Debtors list a claim for “fraud” as set
16 forth in a lawsuit entitled *Peter Kim, et. al. v. The Kang Family 2007 Revocable Trust, et. al.*, Case
17 No. 30-2018-01007154-CU-FR-CJC (the “State Court Action”), which is pending in the Superior
18 Court of California, County of Orange (“State Court”). *Id.* In their Second Amended Complaint
19 filed in the State Court Action on February 11, 2019, the Debtors allege, among other causes of
20 action, that the Kang Trust, Young Ye Kang (as trustee of the Kang Trust), Anthony Kang, Arnold
21 Kang, Prime Properties Real Estate, Inc., and Paul H. Lee intentionally misrepresented facts
22 regarding the Commercial Property, including but not limited to the current and future accessibility
23 of the Commercial Property to vehicles traveling on Bristol Street on both sides. (See RJN, Ex. D)
24 In total, the Debtors have pleaded seven (7) causes of action against these parties (“Debtors’ State
25 Court Action Claims”). *Id.* In its Cross-Complaint filed on December 31, 2018, the Kang Trust
26 alleges, among other causes of action, that the Debtors committed fraud, breach of contract, and
27 breach of the covenant of good faith and fair dealing by knowingly and intentionally submitting
28 fraudulent financial information. (See RJN, Ex. E)

1 **C. Kang Trust's Proof of Claim**

2 On their Schedule E/F, the Debtors list the Kang Trust as a nonpriority unsecured creditor
3 for a judgment in the amount of \$115,000.00. (*See* RJN, Ex. B)

4 On November 21, 2019, the Kang Trust filed a proof of claim in the instant case, asserting a
5 non-priority general unsecured claim in the amount of \$1,453,155.00, which appears on the Claims
6 Register as Claim 17 ("Kang Claim"). (*See* RJN, Ex. C) The basis for the Kang Claim is a Judgment
7 – Unlawful Detainer entered on May 31, 2018 in the amount of \$115,633.44 related to the Lease
8 and damages asserted by the Kang Trust in the State Court Action. *Id.*

9 **D. Settlement of the Kang Claim and Security Deposit, and Sale of the Estate's Interest in**
10 **the State Court Action**

11 The Trustee and the Kang Trust (collectively the "Parties") desire to resolve all disputes,
12 claims, demands and causes of action related to the State Court Action, Kang Claim and Security
13 Deposit by way of settlement, rather than through litigation. Subject to Court approval, the Parties
14 entered into the Settlement/Sale Agreement, a true and correct copy of which is attached as **Exhibit**
15 **"2"** to the Kosmala Decl.

16 Under the Settlement/Sale Agreement, which includes mutual releases of the Parties with
17 respect to any and all matters relating to the Kang Claim and Security Deposit, (i) the Kang Trust
18 shall pay the Trustee, in immediate available funds, the sum of Ninety Thousand Dollars
19 (\$90,000.00) ("Settlement Payment") to resolve all disputes, claims, demands and causes of action
20 related to the Kang Claim and Security Deposit, (ii) the Kang Claim shall be allowed as a non-
21 priority general unsecured claim against the Estate in the reduced amount of \$125,771.17 ("Reduced
22 Claim"), (iii) the Kang Trust shall pay the Trustee, in immediate available funds, the sum of Thirty-
23 Five Thousand Dollars (\$35,000.00) (the "Purchase Price"), subject to overbids, for the Estate's
24 interest in the State Court Action, "as is, where is" with no representations whatsoever; and (iv) if
25 the Trustee has any rights, if any, to Bristol Express by virtue of the Debtors being the sole members
26 of Bristol Express and there may be remnant rights, if any, for prosecuting and defending actions
27 by or against it in order to collect and discharge obligations in its winding down efforts conferred
28 by Cal. Corp. Code § 17707.0 because Bristol Express has been dissolved with the California

Secretary of State, the Trustee is also selling those rights “as is, where is” with no representations whatsoever (“Bristol Express Interest”). Given that the sale of the Estate’s interest in the State Court Action and Bristol Express Interest is subject to overbids, it is anticipated that the Trustee will receive the best and highest value for the Estate’s interest in the State Court Action and the Bristol Express Interest and therefore the Purchase Price is fair and reasonable.

E. Notice of Bidding Procedures

The Trustee has determined that it would benefit the Estate to permit all interested parties to receive information and bid for the Estate’s interest in the State Court Action and the Bristol Express Interest instead of selling the Estate’s interest in the State Court Action and the Bristol Express Interest to the Kang Trust on an exclusive basis. Accordingly, in order to obtain the highest and best offer for the benefit of the creditors of this Estate, the Trustee also seeks Court approval of the following bidding procedures (“Bidding Procedures”):

1. Potential overbidders must bid an initial amount of at least \$5,000.00 over the Purchase Price or a total of at least \$40,000.00. Minimum bid increments thereafter shall be \$1,000.00. The Trustee shall have sole discretion to determine which overbid is best for the Estate and will seek approval thereof from the Court.

2. All Overbids must be delivered in writing and be received by the Trustee and her counsel, Rika M. Kido of Shulman Bastian Friedman & Bui LLP, by no later than 5:00 p.m. on the date that is three (3) business days prior to the hearing on this Settlement/Sale Motion.

3. All Overbids must be accompanied by a deposit (“Overbidder Deposit”) in the form of certified funds in the amount of at least Four Thousand Dollars (\$4,000.00) payable to the Trustee (“Weneta M.A. Kosmala, Chapter 7 Trustee” and reference the bankruptcy estate of Peter Woo Sik Kim and Sharon Soyun Kim) and delivered to the attention of Weneta M.A. Kosmala, Chapter 7 Trustee, 3 MacArthur Place, Suite 760, Santa Ana, CA 92707.

4. All Overbidders must also provide evidence of having sufficient specifically committed funds to complete the transaction for the bid amount and such other documentation relevant to the Overbidders’ ability to qualify as the buyer and to close the sale and immediately and unconditionally pay the winning bid purchase price at the Closing.²

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² Section 2.3.4 (“Closing”) of the Settlement/Sale Agreement provides as follows: The closing of the transactions contemplated by this Agreement (the “Closing Date”) shall take place and become effective within fourteen (14) days after the entry of the Approval Order or the total price bid up and paid by the Successful Bidder (as defined below) or by any back-up bidder(s). At the Closing Date, the Trustee will deliver to the Kang Trust (or the Successful Bidder) a certified copy of the Order approving the Motion and the sale of the Estate’s interest in the State Court Action. The certified copy of the Order shall effectuate the sale and transfer. No other documentation shall be required.

1 5. All Overbidders must seek to acquire the Estate's interest in the State Court Action
2 on terms and conditions not less favorable to the Estate than the terms and conditions to which the
3 Kang Trust has agreed in seeking to purchase the Estate's interest in the State Court Action as set
4 forth herein.

5 6. If one or more overbids are received, the final bidding round for the Estate's interest
6 in the State Court Action shall be held at the hearing on the Motion (as defined below) in the
7 Bankruptcy Court in order to allow all potential bidders to have the opportunity to overbid and
8 purchase the Estate's interest in the State Court Action. At the final bidding round to be conducted
9 before the Bankruptcy Court, the Trustee will seek entry of an order, *inter alia*, authorizing and
10 approving the sale of the Estate's interest in the State Court Action to the bidder whom the Trustee,
11 in the exercise of her business judgment, has determined to have made the highest and best offer to
12 purchase the Estate's interest in the State Court Action, consistent with the Bidding Procedures set
13 forth above (the "Successful Bidder"). The hearing on the Motion may be adjourned or rescheduled
14 without notice, other than by an announcement of the adjourned date at the hearing on the Motion
15 in the Bankruptcy Court.

16 7. At the hearing on the Motion, the Trustee will seek entry of an order, *inter alia*,
17 authorizing and approving the sale of the Estate's interest in the State Court Action to the Successful
18 Bidder. The hearing on the Motion may be adjourned or rescheduled without notice other than by
19 an announcement of the adjourned date at the bankruptcy court hearing on the Motion.

20 8. In the event that the Successful Bidder fails to close the purchase and sale of the
21 Estate's interest in the State Court Action within the time parameters approved by the Court, the
22 Trustee shall retain the Successful Bidder's Deposit and will be released from her obligation to sell
23 the Estate's interest in the State Court Action to the Successful Bidder. The Trustee may then sell
24 the Estate's interest in the State Court Action to the first back-up bidder approved by the Court at
25 the hearing on the Motion ("First Back-Up Bidder").

26 9. In the event that the First Back-Up Bidder fails to close the purchase and sale of the
27 Estate's interest in the State Court Action within the time parameters approved by the Court, the
28 Trustee shall retain the First Back-Up Bidder's Deposit and will be released from his obligation to
sell the Estate's interest in the State Court Action to the First Back-Up Bidder. The Trustee may
then sell the Estate's interest in the State Court Action to the second back-up bidder approved by
the Court at the hearing on the Motion ("Second Back-Up Bidder").

 The Bidding Procedures will be provided to all creditors and any potential bidders or parties
who have shown an interest in the Estate's interest in the State Court Action and the Bristol Express
Interest. In addition, the Court's mandatory form Notice of Sale of Estate Property will be filed
with the Court so that notice of the sale of the Estate's interest in the State Court Action and the
Bristol Express Interest may be posted on the Court's website under the link "Current Notices of
Sales," thereby giving notice to any potential interested parties.

 Based on the foregoing, the Trustee believes that under the circumstances of this case, the
Estate's interest in the State Court Action and the Bristol Express Interest will have been
appropriately marketed for bidding.

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III. ARGUMENT

A. Upon Approval by the Court, a Trustee May Compromise a Claim of the Estate.

The power of the Court to review and approve settlements is expressly recognized in Federal Rule of Bankruptcy Procedure 9019(a), which provides:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

Thus, upon notice to the creditors, the United States Trustee, the debtors and indenture trustees, the trustee may compromise a claim of the estate. The approval of a compromise is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O). *In re Carla Leather, Inc.*, 50 B.R. 764, 775 (S.D.N.Y. 1985).

B. The Bankruptcy Court May Approve a Compromise is Fair and Equitable.

The purpose of a compromise agreement is to allow the parties to avoid the expenses and burdens associated with litigation. *Martin v. Kane (In re A & C Properties)*, 784 F.2d 1377, 1380-81 (9th Cir. 1986), *cert. denied sub nom, Martin v. Robinson*, 479 U.S. 854 (1986). The bankruptcy court has great latitude in approving compromise agreements as long as it finds that the compromise is fair and equitable. *Id.* at 1382; *see also, Woodson v. Fireman's Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988). Generally, the benchmark in determining the propriety of a settlement is whether the settlement is in the best interests of the estate and its creditors. *In re Energy Cooperative, Inc.*, 886 F.2d 921, 927 (7th Cir. 1989). To be approved, the settlement need not represent the highest possible return to the estate, but merely must fall within the "range of reasonableness." *In re Walsh Construction, Inc.*, 669 F.2d 1325, 1328 (9th Cir. 1992). In making this determination, the bankruptcy court need not conduct a trial or even a "mini trial" on the merits. *Id.*

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1 In determining the fairness, reasonableness and adequacy of a proposed settlement, the Court
2 must consider the following factors:

3 (a) The probability of success in the litigation; (b) the difficulties, if
4 any, to be encountered in the matter of collection; (c) the complexity
5 of the litigation involved, and the expense, inconvenience, and delay
necessarily attending it; (d) the paramount interests of the creditors
and a proper deference to their reasonable views in the premises.

6 *A & C Properties*, 784 F.2d at 1381; *Woodson*, 839 F.2d at 620. In other words, the Court must
7 weigh certain factors in order to determine whether the compromise is in the best interests of the
8 bankrupt estate. *A & C Properties*, 784 F.2d at 1382.

9 The Trustee believes that based on the four factors under *A & C Properties*, the proposed
10 settlement is in the best interest of the Estate.

11 1. **The Probability of Success in Litigation.**

12 There is currently no litigation pending against the Kang Trust regarding the Kang Claim or
13 the Security Deposit. If the settlement is not approved, the Trustee would have to file a turnover
14 complaint against the Kang Trust as to the Security Deposit and an objection to the Kang Claim.

15 Pursuant to 11 U.S.C. § 541(a)(1), the Security Deposit is property of the Estate. Section
16 541 is broadly construed to include all property interests, whether reachable by state-law creditors
17 or not, and whether vested or contingent. *See United States v. Rauer*, 963 F.2d 1332 (10th Cir.
18 1992); *In re Yonikus*, 996 F.2d 866 (7th Cir. 1993)(virtually all property of debtor becomes property
19 of estate; in fact, every conceivable interest of debtor, including future, non-possessory, contingent,
20 speculative, and derivative, is within the scope of Section 541). The Trustee is informed and
21 believes that Debtor Peter Kim only paid \$100,000.00 of the Security Deposit and that the W&N
22 Hendon Revocable Trust paid the other \$100,000.00 of the Security Deposit. The Trustee is
23 confident that she would be successful in seeking turnover of the \$100,000.00 of the Security
24 Deposit that the Debtor Peter Kim paid to the Kang Trust, but would have difficulty seeking turnover
25 of the \$100,000.00 of the Security Deposit paid by the W&N Hendon Revocable Trust as an
26 investment in Bristol Express. However, as will be demonstrated below, the other factors weigh in
27 favor of the settlement.

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1 Regarding the Kang Claim, the Trustee only has grounds to object to the unliquidated portion
2 of the Kang Claim (\$1,327,384.00 of the Kang Claim relates to damages asserted by the Kang Trust
3 in the State Court Action). Since a significant portion of the Kang Claim has not been adjudicated
4 and the Debtors also assert they have damages against the Kang Claim in the State Court, it is unclear
5 how much of the Kang Claim should be allowed. In their Second Amended Complaint filed in the
6 State Court Action on February 11, 2019, the Debtors allege, among other causes of action, that the
7 Kang Trust intentionally misrepresented facts regarding the Commercial Property, including but not
8 limited to the current and future accessibility of the Commercial Property to vehicles traveling on
9 Bristol Street on both sides. In its Cross-Complaint filed on December 31, 2018, the Kang Trust
10 alleges, among other causes of action, that the Debtors committed fraud, breach of contract, and
11 breach of the covenant of good faith and fair dealing by knowingly and intentionally submitting
12 fraudulent financial information.

13 Assuming for the sake of argument that the Debtors and the Kang Trust both committed bad
14 acts in the negotiation of and entering into of the Lease, judgment in the State Court Action could
15 go either way. Accordingly, it is unclear whether the Trustee would be successful in objecting to
16 the Kang Claim. Notwithstanding the Trustee's likelihood of success in litigation of an objection
17 to the Kang Claim, the balance of the elements outlined below ultimately weigh in favor of settling
18 all disputes related to the Kang Claim.

19 2. **Difficulties, if any, to be Encountered in the Matter of Collections.**

20 The difficulty of collection weighs in favor of settling. Even if the Trustee were successful
21 on her turnover complaint, the Trustee would then have to collect on that judgment. The Kang Trust
22 appears to have assets to attach such a judgment. However, enforcing the judgment would likely be
23 costly and difficult. Accordingly, this factor weighs in favor of settling.

24 3. **The Complexity of Litigation Involved, Expense, Inconvenience and Delay**
25 **Necessarily Attending It.**

26 While the legal issues associated with an objection to the Kang Claim or turnover of the
27 Security Deposit are not overly complex, the expenses, inconvenience, and delay associated with
28 pursuing said claims far outweigh any additional benefit to the Estate. Under the terms of the

1 Settlement/Sale Agreement, the Parties desire to settle and resolve any and all disputes regarding
2 the Kang Claim and the Security Deposit without further time or expense. Rather than delay the
3 matter and incur expenses or resources litigating an objection to the Kang Claim and turnover of the
4 Security Deposit, the Trustee has determined that the settlement reached is fair and reasonable and
5 will ensure the Trustee nets around the same result as if the Estate were to proceed with such
6 litigation. Based thereon, the Trustee believes the proposed settlement and compromise is the most
7 expedient and cost-effective method for resolving any and all disputes, claims, demands and causes
8 of action related to the Kang Claim and the Security Deposit.

9 4. **The Paramount Interest of the Creditors and the Proper Deference to the**
10 **Reasonable Views.**

11 The Settlement/Sale Agreement should be approved as a means of preserving assets and
12 enhancing the value of the Estate. The Settlement/Sale Agreement avoids costly and risky activities
13 related to an objection to the Kang Claim and turnover complaint for the Security Deposit.
14 Settlement therefore results in certainty and substantial benefit to the Estate in that:

15 • The settlement reached provides certainty, ceases the accrual of unnecessary
16 expenses, and provides a substantial benefit in the form of a payment to the Estate of \$90,000.00
17 (which is at least, if not more, than the Trustee may have received after deducting litigation costs,
18 for a turnover complaint as to the Security Deposit).

19 • Settlement provides certainty as to the amount of the Kang Claim, allowing it as a
20 non-priority general unsecured claim against the Estate in the reduced amount of \$125,771.17.

21 • The Reduced Claim shall be paid on a pro-rata basis and concurrent with all other
22 allowed non-priority general unsecured claims in this bankruptcy case.

23 • The Parties agree to pay their own attorneys' fees and costs and agree to exchange
24 mutual releases.

25 • The settlement is fair and reasonable and will net the Estate the same result as if the
26 Estate were to proceed with litigation of an objection to the Kang Claim and turnover of the Security
27 Deposit. Any expenses which would be incurred through litigation of these claims will exceed any
28 additional benefit that might be achieved.

1 In summary, the Settlement/Sale Agreement is based on the Trustee's good business
2 judgment that it will benefit the Estate and creditors, and therefore approval of the Settlement/Sal
3 Motion is proper.

4 **C. There is a Good Business Reason for the Sale and the Sale is in the Best Interest of the**
5 **Estate³.**

6 The duties of a trustee in a Chapter 7 filing are enumerated in Section 704 of the Bankruptcy
7 Code, which provide in relevant part as follows:

8 (a) The trustee shall—

9 (1) collect and reduce to money the property of the estate for which
10 such trustee serves, and close such estate as expeditiously as is
compatible with the best interests of parties in interest;

11 (2) be accountable for all property received;

...

12 11 U.S.C. § 704.

13 Further, the Trustee, after notice and hearing, may sell property of the estate. 11 U.S.C. §
14 363(b). Courts will ordinarily approve a proposed sale if there is a good business reason for the sale
15 and the sale is in the best interests of the estate. *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830,
16 841 (Bankr. C.D. Cal. 1991); *In re Lionel Corp.*, 722 F.2d 1063, 1069 (2d Cir. 1983). In this case,
17 the sale of the Estate's interest in the State Court Action and the Bristol Express Interest is
18 anticipated to net the Estate approximately \$35,000.00. Given that the sale of the State Court Action
19 and Bristol Express Interest is subject to overbids, it is anticipated that the Trustee will receive the
20 best and highest value for the Estate's interest in the State Court Action and the Bristol Express
21 Interest and therefore the Purchase Price is fair and reasonable. In the event the Purchase Price is
22 increased by a successful overbid, the estimated net proceeds will increase, providing an additional
23 benefit to unsecured creditors. Accordingly, there is a good business reason for the sale and the sale
24 is in the best interests of the Estate.

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28 ³ Although Local Bankruptcy Rule 6004-1(c)(2)(C) does not require that a memorandum of points and authorities be
filed in support of sale motion, the Trustee is nevertheless submitting one.

1 **D. The Court Has the Authority to Waive the Fourteen-Day Stay of Sale**

2 Federal Rule of Bankruptcy Procedure 6004(h) provides that “[a]n order authorizing the use,
3 sale or lease of property other than cash collateral is stayed until the expiration of 14 days after entry
4 of the order, unless the Court orders otherwise.” Fed. Rule Bankr. P. 6004(h).

5 The Trustee desires to close the sale of the Estate’s interest in the State Court Action and the
6 Bristol Express Interest as soon as practicable after entry of an order approving the sale.
7 Accordingly, the Trustee requests that the Court, in the discretion provided it under Federal Rule of
8 Bankruptcy Procedure 6004(h), waive the fourteen (14) day stay requirement.

9 **IV. CONCLUSION**

10 **WHEREFORE**, based upon the foregoing, the Trustee respectfully submits that good cause
11 exists for granting the Settlement/Sale Motion and requests that the Court enter an order as follows:

- 12 1. Granting the Settlement/Sale Motion;
- 13 2. Approving the Bidding Procedures set forth above for the sale of the Estate’s interest
14 in the State Court Action Claims;
- 15 3. Approving the Settlement/Sale Agreement, a copy of which is attached as **Exhibit**
16 **“2”** to the Kosmala Decl.;
- 17 4. Authorizing the Trustee to sell (i) the Estate’s interest in the State Court Action on
18 an as-is, where-is basis, with no representations whatsoever, and (ii) the Estate’s rights, if any, to
19 Bristol Express by virtue of the Debtors being the sole members of Bristol Express and there may
20 be remnant rights, if any, for prosecuting and defending actions by or against it in order to collect
21 and discharge obligations in its winding down efforts conferred by Cal. Corp. Code § 17707.06
22 because Bristol Express has been dissolved with the California Secretary of State, to the Kang Trust
23 (or Successful Bidder) pursuant to the terms and conditions as set forth in the Settlement/Sale
24 Agreement attached as **Exhibit “2”** to the Kosmala Decl.;
- 25 5. Authorizing the Trustee to execute any necessary documents to carry out the
26 provisions as contemplated in the Settlement/Sale Agreement;

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7. For such other and further relief as the Court deems just and proper under the circumstances of this case.

SHULMAN BASTIAN FRIEDMAN & BUI LLP

By: /s/ Rika M. Kido
Lynda T. Bui
Rika M. Kido
Attorneys for Weneta M.A. Kosmala,
Chapter 7 Trustee

DECLARATION

DECLARATION OF WENETA M.A. KOSMALA

I, Weneta M.A. Kosmala, declare as follows:

1. I am the Chapter 7 Trustee for the bankruptcy estate of *In re Peter Woo Sik Kim and Sharon Soyun Kim*, Case No. 8:19-bk-11414-ES. I have personal knowledge of the facts set forth herein and could, if called as a witness, competently testify thereto.

2. I am familiar with the Debtors' bankruptcy proceeding and make this Declaration in support of *Motion for Order: (1) Approving Settlement and Compromise of Disputes Under Fed. R. Bankr. P. 9019 By and Between Chapter 7 Trustee and The Kang Family 2007 Revocable Trust; (2) Approving the Sale of Property of the Estate Pursuant to 11 U.S.C. § 363(b)(1), Subject to Overbids, Combined with Notice of Bidding Procedures and Request for Approval of the Bidding Procedures Utilized; and (3) Granting Related Relief* ("Settlement/Sale Motion"). Unless otherwise noted, capitalized terms in this Declaration have the meaning set forth in the Settlement/Sale Motion. I have read and I am aware of the contents of the Settlement/Sale Motion and the accompanying Memorandum of Points and Authorities. The facts stated in the Settlement/Sale Motion and the Points and Authorities are true to the best of my knowledge.

3. I am informed and believe that Debtor Peter Kim and W&N Hendon Revocable Trust each paid \$100,000.00 of the Security Deposit.

4. I am informed and believe that the Debtors were the only members of Bristol Express. Bristol Express was dissolved, its registration was cancelled, and its powers, rights and privileges ceased in California as of May 20, 2019 as provided for in the LLC Termination – Certificate of Cancellation filed with the California Secretary of State ("LLC Cancellation Certificate"). A true and correct copy of the LLC Cancellation Certificate is attached hereto **Exhibit "1"**.

5. Through the Settlement/Sale Motion, I request approval of the Settlement and Sale Agreement between myself as the Trustee for the Estate and The Kang Family 2007 Revocable Trust ("Settlement/Sale Agreement"), a true and correct copy is attached hereto as **Exhibit "2"**.

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EXHIBIT 1



California Secretary of State
Electronic Filing



LLC Termination – Certificate of Cancellation

Entity Name: BRISTOL EXPRESS CAR WASH, LLC

Entity (File) Number: 201733810007

File Date: 05/20/2019

Detailed Filing Information

Dissolution

The Dissolution was made by a vote of ALL of the members of the California Limited Liability Company.

Tax Liability Statement

All final returns required pursuant to the California Revenue and Taxation Code have been or will be filed with the California Franchise Tax Board.

Cancellation Statement

Upon the effective date of this Certificate of Cancellation, the Limited Liability Company's registration is cancelled and its powers, rights and privileges will cease in California.

By signing this document, I certify that the information is true and correct and that I am authorized by California law to sign.

Electronic Signature(s):

Peter Kim

Sharon Kim

PETER KIM

EXHIBIT 2

SETTLEMENT AND SALE AGREEMENT

This Settlement and Sale Agreement (“Agreement”) is entered into by and between Weneta M.A. Kosmala, solely in her capacity as Chapter 7 Trustee (“Trustee”) for the bankruptcy estate (“Estate”) of Peter Woo Sik Kim and Sharon Soyun Kim (“Debtors”), on the one hand, and The Kang Family 2007 Revocable Trust (“Kang Trust”), on the other hand. The aforementioned parties together shall be collectively referred to herein as the “Parties” and individually as “Party.”

I. RECITALS

This Agreement is made by the Parties, with reference to the following facts:

1.1 On April 17, 2019, the Debtors filed a Voluntary Petition for relief under Chapter 7 of the Bankruptcy Code, commencing Case No. 8:19-bk-11414-ES (“Petition Date”).

1.2 Weneta M.A. Kosmala is the duly appointed, qualified, and acting Chapter 7 Trustee for the Debtors’ Estate.

1.3 On December 6, 2017, the Debtors and Xena Ocean, Inc. (for which the Debtors are one hundred percent (100%) interest holders) entered into a *Single Tenant Lease – NNN* with Young Ye Kang, as Trustee of the Kang Trust (“Lease”) for the commercial property located at 2750 Bristol Street, Costa Mesa, CA (“Commercial Property”). Pursuant to the Lease, the Debtors paid a security deposit in the total amount of Two Hundred Thousand Dollars (\$200,000.00) to the Kang Trust (“Security Deposit”). The Debtor Peter Kim and W&N Hendon Revocable Trust each paid \$100,000.00 of the Security Deposit.

1.4 Pursuant to the Assignment, Assumption and Landlord Consent dated December 7, 2017, Xena Ocean, Inc. assigned its right, title and interest in, to and under the Lease to Bristol Express Car Wash, LLC (“Bristol Express”).

1.5 On their Schedule A/B, the Debtors list their interest in Bristol Express. The Trustee is informed and believes that the Debtors were the only members of Bristol Express. Bristol Express was dissolved, its registration was cancelled, and its powers, rights and privileges ceased in California as of May 20, 2019 as provided for in the LLC Termination – Certificate of Cancellation filed with the California Secretary of State. Pursuant to Cal. Corp. Code § 17707.06, Bristol Express “continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it in order to collect and discharge obligations, disposing of and conveying its property, and collecting and dividing its assets.”

1.6 On their Schedule A/B, the Debtors list “Claim against Kang Family Trust” with an unknown value.

1.7 On their Statement of Financial Affairs, Part 4, the Debtors list a claim for “fraud” as set forth in a lawsuit entitled *Peter Kim, et. al. v. The Kang Family 2007 Revocable Trust, et. al.*, Case No. 30-2018-01007154-CU-FR-CJC (the “State Court Action”), which is pending in the Superior Court of California, County of Orange (“State Court”). In their Second Amended

Complaint filed in the State Court Action on February 11, 2019, the Debtors allege, among other causes of action, that the Kang Trust, Young Ye Kang (as trustee of the Kang Trust), Anthony Kang, Arnold Kang, Prime Properties Real Estate, Inc., and Paul H. Lee intentionally misrepresented facts regarding the Commercial Property, including but not limited to the current and future accessibility of the Commercial Property to vehicles traveling on Bristol Street on both sides. In total, the Debtors have pleaded seven causes of action against these parties ("Debtors' State Court Action Claims"). In its Cross-Complaint filed on December 31, 2018, the Kang Trust alleges, among other causes of action, that the Debtors committed fraud, breach of contract, and breach of the covenant of good faith and fair dealing by knowingly and intentionally submitting fraudulent financial information.

1.8 On their Schedule E/F, the Debtors list the Kang Trust as a nonpriority unsecured creditor for a judgment in the amount of \$115,000.00.

1.9 On November 21, 2019, the Kang Trust filed a proof of claim in the Bankruptcy Case, asserting a non-priority general unsecured claim in the amount of \$1,453,155.00, which appears on the Claims Register as Claim 17 ("Kang Claim"). The basis for the Kang Claim is a Judgement – Unlawful Detainer entered on May 31, 2018 in the amount of \$115,633.44 related to the Lease and damages asserted by the Kang Trust in the State Court Action.

1.10 The Parties agree that it is in their best interests to resolve all disputes, claims, demands and causes of action related to the State Court Action, Kang Claim and Security Deposit by way of settlement, rather than through litigation, and therefore it is their intention and desire at this time to settle in the manner and upon the terms and conditions set forth in this Agreement, it being specifically understood and agreed that any and all acts which are to be performed pursuant to this Agreement are not to be and will not be construed in any way as a concession and/or admission by any of the Parties of the truth of any of the allegations which have been made by or against any of the Parties.

II. AGREEMENT

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the adequacy of which is hereby acknowledged by each Party, and in consideration of the mutual promises and covenants set forth below, the Parties agree as follows:

2.1 Effective Date of Agreement. This Agreement shall become effective and binding on the Parties hereto upon the date ("Effective Date") of entry of an order of the Bankruptcy Court in the Bankruptcy Case approving this Agreement pursuant to Federal Rule of Bankruptcy Procedure 9019 ("Approval Order"). If the Court does not enter the Approval Order, then this Agreement shall not become effective and shall be null and void.

2.2 Settlement of Kang Claim and Security Deposit. Subject to the terms and conditions of this Agreement, the Parties also agree to resolve all disputes, claims, demands and causes of action related to the Kang Claim and Security Deposit by way of settlement as follows:

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2.2.1 Settlement Amount. Concurrent with the execution of this Agreement, the Kang Trust shall pay to the Trustee, in immediately available funds, the sum of Ninety Thousand Dollars (\$90,000.00) ("Settlement Payment") to resolve all disputes, claims, demands and causes of action related to the Kang Claim and Security Deposit. The Settlement Payment shall be made payable to "Weneta M.A. Kosmala, Chapter 7 Trustee" and reference the bankruptcy estate of Peter Woo Sik Kim and Sharon Soyun Kim, and shall be mailed or delivered to the attention of Weneta M.A. Kosmala, 3 MacArthur Place, Suite 760, Santa Ana, CA 92707. If the Bankruptcy Court approves this Agreement, the Settlement Payment shall then become property of the Estate. If the Bankruptcy Court does not approve the Agreement, then the Settlement Payment shall be immediately returned to the Kang Trust.

2.2.2 The Reduced Kang Claim. The Kang Claim shall be allowed as a non-priority general unsecured claim against the Estate in the reduced amount of \$125,771.17 ("Reduced Claim"). The Reduced Claim shall be paid to the Kang Trust on a pro-rata basis and concurrent with the payment of all other allowed non-priority general unsecured claims in the Bankruptcy Case.

2.3 Kang Trust's Purchase of the Estate's Interest in the State Court Action. Subject to the terms and conditions of this Agreement, on the Closing Date (as defined below), the Trustee shall sell to the Kang Trust, and the Kang Trust shall purchase all of the Trustee's right, title and interest "as is, where is" in the State Court Action as specified herein, including without limitation all of Debtors' State Court Action Claims against all defendants in the State Court Action, as of the Closing Date. To the extent that the Trustee has any rights to Bristol Express by virtue of the Debtors being the sole members of Bristol Express, the Trustee is also selling all rights "as is, where is" with no representations whatsoever.

2.3.1 Purchase Price. Concurrent with the execution of this Agreement, the Kang Trust shall pay to the Trustee, in immediately available funds, the sum of Thirty-Five Thousand Dollars (\$35,000.00) (the "Purchase Price") for the Estate's interest in the State Court Action. The Purchase Price shall be made payable to "Weneta M.A. Kosmala, Chapter 7 Trustee" and reference the bankruptcy estate of Peter Woo Sik Kim and Sharon Soyun Kim, and shall be mailed or delivered to the attention of Weneta M.A. Kosmala, 3 MacArthur Place, Suite 760, Santa Ana, CA 92707. If the Bankruptcy Court approves this Agreement, the Purchase Price shall then become property of the Estate. If the Bankruptcy Court does not approve the Agreement or the Kang Trust is not the Successful Bidder (defined below), then the Purchase Price shall be promptly returned to the Kang Trust.

2.3.2 Subject to Overbids. Because the State Court Action cannot be easily valued and given the requirements of Local Bankruptcy Rule 6004-1(c)(2)(A), the sale of the Estate's interest in the State Court Action shall be subject to the following overbid terms:

2.3.2.1 Potential overbidders must bid an initial amount of at least \$5,000.00 over the Purchase Price or a total of at least **\$40,000.00**. Minimum bid increments thereafter shall be \$1,000.00. The Trustee shall have sole discretion to

determine which overbid is best for the Estate and will seek approval thereof from the Court.

2.3.2.2 All Overbids must be delivered in writing and be received by the Trustee and her counsel, Rika M. Kido of Shulman Bastian Friedman & Bui LLP, by no later than 5:00 p.m. on the date that is **three (3) business days prior to the hearing on the Motion (as defined below)**.

2.3.2.3 All Overbids must be accompanied by a deposit ("Overbidder Deposit") in the form of certified funds in the amount of at least Four Thousand Dollars (\$4,000.00) payable to the Trustee ("Weneta M.A. Kosmala, Chapter 7 Trustee" and reference the bankruptcy estate of Peter Woo Sik Kim and Sharon Soyun Kim) and delivered to the attention of Weneta M.A. Kosmala, Chapter 7 Trustee, 3 MacArthur Place, Suite 760, Santa Ana, CA 92707.

2.3.2.4 All Overbidders must also provide evidence of having sufficient specifically committed funds to complete the transaction for the bid amount and such other documentation relevant to the Overbidders' ability to qualify as the buyer and to close the sale and immediately and unconditionally pay the winning bid purchase price at the Closing.

2.3.2.5 All Overbidders must seek to acquire the Estate's interest in the State Court Action on terms and conditions not less favorable to the Estate than the terms and conditions to which the Kang Trust has agreed in seeking to purchase the Estate's interest in the State Court Action as set forth herein.

2.3.2.6 If one or more overbids are received, the final bidding round for the Estate's interest in the State Court Action shall be held at the hearing on the Motion (as defined below) in the Bankruptcy Court in order to allow all potential bidders to have the opportunity to overbid and purchase the Estate's interest in the State Court Action. At the final bidding round to be conducted before the Bankruptcy Court, the Trustee will seek entry of an order, *inter alia*, authorizing and approving the sale of the Estate's interest in the State Court Action to the bidder whom the Trustee, in the exercise of her business judgment, has determined to have made the highest and best offer to purchase the Estate's interest in the State Court Action, consistent with the Bidding Procedures set forth above (the "Successful Bidder"). The hearing on the Motion may be adjourned or rescheduled without notice, other than by an announcement of the adjourned date at the hearing on the Motion in the Bankruptcy Court.

2.3.2.7 At the hearing on the Motion, the Trustee will seek entry of an order, *inter alia*, authorizing and approving the sale of the Estate's interest in the State Court Action to the Successful Bidder. The hearing on the Motion may be adjourned or rescheduled without notice other than by an announcement of the adjourned date at the bankruptcy court hearing on the Motion.

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2.3.2.8 In the event that the Successful Bidder fails to close the purchase and sale of the Estate's interest in the State Court Action within the time parameters approved by the Court, the Trustee shall retain the Successful Bidder's Deposit and will be released from her obligation to sell the Estate's interest in the State Court Action to the Successful Bidder. The Trustee may then sell the Estate's interest in the State Court Action to the first back-up bidder approved by the Court at the hearing on the Motion ("First Back-Up Bidder").

2.3.2.9 In the event that the First Back-Up Bidder fails to close the purchase and sale of the Estate's interest in the State Court Action within the time parameters approved by the Court, the Trustee shall retain the First Back-Up Bidder's Deposit and will be released from his obligation to sell the Estate's interest in the State Court Action to the First Back-Up Bidder. The Trustee may then sell the Estate's interest in the State Court Action to the second back-up bidder approved by the Court at the hearing on the Motion ("Second Back-Up Bidder").

2.3.3 As Is/Where Is. The Trustee shall sell, assign, transfer, convey and deliver to the Kang Trust (or to the Successful Bidder) the Estate's interest in the State Court Action, including without limitation all of Debtors' State Court Action claims against all defendants in the State Court Action, on an "As Is" and "Where Is" basis, without any representations or warranties of any kind, except as expressly set forth herein.

2.3.4 Closing. The closing of the transactions contemplated by this Agreement (the "Closing Date") shall take place and become effective within fourteen (14) days after the entry of the Approval Order or the total price bid up and paid by the Successful Bidder (as defined below) or by any back-up bidder(s). At the Closing Date, the Trustee will deliver to the Kang Trust (or the Successful Bidder) a certified copy of the Order approving the Motion and the sale of the Estate's interest in the State Court Action. The certified copy of the Order shall effectuate the sale and transfer. No other documentation shall be required.

2.4 Motion for Approval of Sale and Compromise. Upon receipt of a fully executed copy of this Agreement, the Trustee shall promptly file a motion with the Bankruptcy Court to obtain approval of this Agreement ("Motion"). This Agreement is contingent upon and expressly conditioned on the issuance of the Approval Order. Unless and until approved by the Bankruptcy Court, this Agreement set forth herein is of no force or effect whatsoever. The Parties acknowledge that this Agreement is the result of extensive good faith negotiations between the Parties and is not to be construed as an admission of liability on the part of any of the Parties hereto, their agents, employees or officers, by whom liability is expressly denied. The Parties are bound by this Agreement subject only to Bankruptcy Court approval and waive any right to object to approval by the Bankruptcy Court.

2.5 Jurisdiction of the Bankruptcy Court. Should any dispute arise regarding this Agreement, the United States Bankruptcy Court for the Central District of California, Santa Ana Division shall have exclusive jurisdiction to determine the same. The Bankruptcy Court shall retain jurisdiction to resolve any such dispute even after the case is dismissed.

2.6 Trustee Capacity. The Trustee is signing this Agreement in her capacity solely as Chapter 7 Trustee for the Estate. Nothing contained herein shall in any way impute liability to the Trustee, personally or as a member of any professional organization, or anyone acting on her behalf, including but not limited to her counsel, Shulman Bastian Friedman & Bui LLP.

2.7 Further Documentation of Settlement. The Parties agree that after the Court approves the Motion, they will execute any and all further and additional documents and take all further and additional steps, which may be necessary or convenient to consummate the terms of this Agreement and accomplish the purposes thereof.

2.8 Releases. The Parties agree to be bound by the releases set forth below.

III. RELEASES

3.1 Release by Estate. Effective ninety-one (91) days after the Trustee receives the Settlement Payment, and except for the obligations created by this Agreement, the Trustee, solely in her capacity as the Chapter 7 trustee of the Debtors' Estate, on behalf the Debtors' Estate and its administrators, insurance companies, predecessors, successors, assigns, agents, servants, employees, members, corporations, partnerships, partners, associates, attorneys, representatives, principals, joint ventures, past and present, or anyone else claiming by and through her, do hereby acknowledge full and complete satisfaction of and do hereby fully and forever release and discharge the Kang Trust, as well as its administrators, predecessors, successors, assigns, agents, servants, employees, members, corporations, insurance companies and their subsidiaries and parent companies, partnerships, partners, associates, attorneys, representatives, joint ventures, trustees, past and present, and each of them, from any and all claims, demands and causes of action of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, whether concealed or hidden, which arise out of or relate to the Kang Claim and Security Deposit.

3.2 Release by Kang Trust. Effective ninety-one (91) days after the Trustee receives the Settlement Payment, and except for the rights and obligations created by this Agreement, the Kang Trust, on behalf of itself and its administrators, insurance companies, predecessors, successors, assigns, agents, servants, employees, members, corporations, partnerships, partners, associates, attorneys, representatives, joint ventures, trustees, past and present, or anyone else claiming by and through them, does hereby acknowledge full and complete satisfaction of and do hereby fully and forever release and discharge the Debtors' Estate and the Trustee, both individually and solely in her capacity as the Chapter 7 trustee of the Debtors' Estate, as well as her heirs, spouses, offspring, executors, administrators, predecessors, successors, assigns, agents, servants, employees, members, corporations, partnerships, partners, associates, attorneys (Shulman Bastian Friedman & Bui LLP) representatives, joint ventures, trustees, past and present, and each of them, from any and all claims, demands and causes of action of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, whether concealed or hidden, which arise out of or relate to the Kang Claim and Security Deposit.

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3.3 Scope of Releases.

(i) It is a condition hereof, and it is the intention of the Parties in executing this Agreement and in giving the releases set forth herein, that the same shall be effective as a bar to each and every claim, demand, and cause of action, matter or thing specified; and in furtherance of this specific intention, that, effective ninety-one (91) days after the Trustee receives the Settlement Payment, the Parties hereby expressly waive any and all rights and benefits conferred upon them by the provisions of Section 1542 of the California Civil Code which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

(ii) The Parties represent and warrant that they have been advised to seek advice from independent legal counsel of their own choosing regarding this Agreement and its terms and language, and understand and acknowledge the significance and consequence of these releases, and the specific waiver of Section 1542, and the Parties, and each of them, expressly consent that this Agreement and the releases set forth herein shall be given full force and effect according to each and all of their express terms and provisions, including those relating to unknown and unsuspected claims, demands and causes of action, if any, as well as those relating to any other claims, demands and causes of action herein above specified.

IV. REPRESENTATION AND WARRANTIES

4.1 The Parties hereto, and each of them, separately represent and warrant to each other that they have not heretofore assigned or transferred, or purported to assign or transfer, to any other person or entity any claim or other matter herein released.

4.2 The Parties hereto, and each of them, separately represent and warrant to each other that they will execute all documents necessary to carry out the purpose of this Agreement and to cooperate with each other in the expeditious filing of any and all documents and the fulfillment of the terms of this Agreement.

4.3 The Parties hereto hereby warrant and represent that each and every recital and representation contained herein is true and correct to the best of their knowledge.

4.4 The Parties hereto hereby warrant and represent that he or she has been duly authorized to execute this Agreement and to undertake the obligations contained herein.

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4.5 The Parties represent that they fully understand their right to discuss all aspects of this Agreement with their own attorneys, that they have carefully reviewed and fully understand all of the provisions of this Agreement, and that they are voluntarily entering into this Agreement.

4.6 The Parties to this Agreement shall bear their own costs, expenses, and attorneys' fees, whether taxable or otherwise, incurred in or arising out of or in any way related to the matters released herein.

V. MISCELLANEOUS

5.1 Entire Agreement. This Agreement constitutes the entire understanding and agreement between the Parties concerning the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, terms, conditions and representations, written or oral, made by any of the Parties or their agents, concerning the matters covered by this Agreement.

5.2 Modification and/or Amendment. This Agreement may be amended and modified only by a written agreement signed by all of the Parties specifically acknowledging and approving of the modification.

5.3 Execution of Documents. Each Party agrees to execute all documents necessary to carry out the purposes of this Agreement, and to cooperate with the other in the expeditious filing of any and all documents and the fulfillment of the terms of this Agreement.

5.4 Successors and Assigns. This Agreement shall inure to the benefit of, and shall be binding upon the Parties, and each of them, and their respective successors, assigns, heirs, partners, agents, officers, corporations, partnerships, partners, shareholders, representatives, and each of them.

5.5 Controlling Law and Mediation. This Agreement has been entered into in the State of California and this Agreement, including any rights, remedies, or obligations provided for thereunder, shall be construed and enforced in accordance with the laws of the State of California. Any dispute arising out of this Agreement shall be referred to the Bankruptcy Court mediation panel.

5.6 Severability. If any immaterial provision of this Agreement is held, determined or adjudicated to be invalid, unenforceable or void for any reason, each such provision shall be severed from the remaining portions of this Agreement and shall not affect the validity and enforceability of such remaining material provisions.

5.7 Effect of Headings. The titles and headings of this Agreement are for convenience and identification only, and shall not be deemed to limit, amplify, or define the contents of the respective sections or paragraphs to which they pertain.

5.8 Gender. Whenever in this document the context may so require, the masculine gender shall be deemed to include the feminine and neuter genders, and vice-versa.

5.9 Recitals. Each term of this Agreement is contractual and not merely a recital.

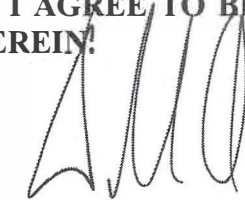
5.10 Construction. This Agreement has been negotiated at arm's length between persons (or their representatives) sophisticated and knowledgeable in the matters dealt with in this Agreement. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is hereby waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Agreement.

5.11 Counter-parts. This Agreement may be executed in one or more Counter-parts (multiple signatures) each of which shall be deemed an original, and all of which constitute one and the same instrument.

5.12 Attorneys' Fees. All Parties shall bear their own attorneys' fees and costs. In the event any claim, dispute and/or litigation arises out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs incurred in prosecuting or defending said claim, dispute and/or litigation.

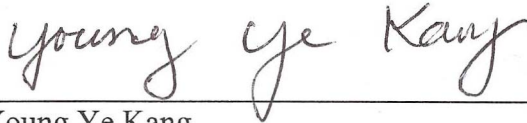
BY SIGNING THIS AGREEMENT WHERE INDICATED BELOW I CERTIFY THAT I HAVE READ THE FOREGOING AGREEMENT IN ITS ENTIRETY, THAT I FULLY UNDERSTAND ALL THE WORDS, LANGUAGE, TERMS AND CONDITIONS CONTAINED HEREIN AND THAT I AGREE TO BE BOUND BY ALL THE TERMS AND CONDITIONS SET FORTH HEREIN.

Dated: October 27, 2020



Weneta M.A. Kosmala, solely in her capacity as the
Chapter 7 Trustee for the bankruptcy estate of Peter
Woo Sik Kim and Sharon Soyun Kim

THE KANG FAMILY 2007 REVOCABLE TRUST



Dated: October 29, 2020

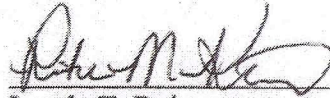
Young Ye Kang
Trustee

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE.]

APPROVED AS TO FORM:

Dated: October 27, 2020

SHULMAN BASTIAN FRIEDMAN & BUI LLP



Lynda T. Bui

Rika M. Kido

Attorneys for Weneta M.A. Kosmala, Chapter 7 Trustee

SHAMROCK LEGAL, APC

Dated: 10/29/2020, 2020



E. Richard McGuire

Attorneys for The Kang Family 2007 Revocable
Trust